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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,221	10/28/2005	Russell L Couturier	10040239-3 (28579-190)	7820
22878 7590 10/05/2007 AGILENT TECHNOLOGIES INC. INTELLECTUAL PROPERTY ADMINISTRATION, LEGAL DEPT. MS BLDG. E P.O. BOX 7599 LOVELAND, CO 80537			EXAMINER NGUYEN, PHUOC H	
			ART UNIT 2143	PAPER NUMBER
			NOTIFICATION DATE 10/05/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPOPS.LEGAL@agilent.com

Office Action Summary

Application No.

10/531,221

Applicant(s)

COUTURIER ET AL.

Examiner

Phuoc H. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 April 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/13/2005</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. Figures 1-2 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The abstract of the disclosure is objected to because the abstract is written less than 150 words in length and the abstract should be in narrative form. Correction is required. See MPEP § 608.01(b).

4. The disclosure is objected to because of the following informalities:

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The applicant is advised to update information cited under the "Cross Reference to Related Applications" section in page 2 of original specification.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-7 are rejected under 35 U.S.C. 102(e) as being anticipated by Zhao et al. (U.S. 6,799,213).

Re claim 1, Zhao et al. disclose in Figures 1-5 a network load testing system (e.g. abstract) comprising: an addressable named list means to enable the generation of substantially random and unique network transaction instances simulative of real network traffic patterns (e.g. by components 124 and 122 in Figure 1 and col. 4 lines 48-68), addressing means operable to address the named list means (e.g. by means of query the database in col. 3 lines 1-10 and col. 8 lines 2-10), and generating means, operable to communicate with the addressing means, for generating the substantially random and unique network transaction instances simulative of real network traffic patterns (e.g. abstract, Figure 2, col. 2 lines 36-56, col. 4 lines 21-34, and col. 8 lines 17-30).

Re claim 2, Zhao et al. disclose in Figures 1-5 means to enable the generation of substantially random and unique attributes to vary a population of synthetic user attributes (e.g. Figures 4-5 and cols. 5-6).

Re claim 3, Zhao et al. further disclose in Figures 1-5 the synthetic user attributes include any of URLs, hosts, security levels, authentication, ports, and headers (e.g. col. 3 lines 1-10 and Figure 5).

Re claim 4, Zhao et al. further disclose in Figures 1-5 means to enable the generation of substantially unique but substantially predictable synthetic user attributes for introducing variation into ones of a series of instances (e.g. Figures 4-5).

Re claim 5, Zhao et al. further disclose in Figures 1-5 means for generating network transaction instances in accordance with a distribution that is substantially random but representative of realistic population loads (e.g. abstract and col. 4 lines 20-34).

Re claim 6, Zhao et al. disclose in Figures 1-5 a network load testing system (e.g. abstract and Figure 1) comprising: means for generating synthetic transaction instances, simulative of the network load presented by real users (e.g. generate a configuration as seen in Figures 4-5), in accordance with a test plan containing multiple population classes (e.g. by components 122 and 124 in Figure 1), and wherein: each of the population classes contains attributes that describe the behavior of each instance generated in association with the group (e.g. col. 4 lines 62-68, col. 5 lines 21-29, and col. 8 lines 10-18).

Re claim 7, Zhao et al. further disclose in Figures 1-5 a network testing resource application for generating, based on the test plan and the attributes contained in the population

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classes therein, a series of instances and a selected network protocol representative of an actual load (e.g. col. 4 lines 20-40).

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 7,111,204

U.S. Patent No. 6,934,934

U.S. Patent No. 6,891,802

U.S. Patent No. 6,549,944

U.S. Patent Application No. 2003/0009544

U.S. Patent Application No. 2003/0149765

U.S. Patent Application No. 2003/0005044

U.S. Patent Application No. 2002/0198985

U.S. Patent Application No. 2002/0013832

U.S. Patent Application No. 2003/0074606

U.S. Patent Application No. 2002/0138226

U.S. Patent Application No. 2003/0115266

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuoc H. Nguyen whose telephone number is 571-272-3919.

The examiner can normally be reached on Monday - Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Phuoc H Nguyen
Examiner
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September 24, 2007